

Memorandum of Decision: 04-20160577R
Gross Retail Tax
For the Year 2015

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HOLDING

Indiana Restaurant was entitled to utility sales tax exemption because it demonstrated that the natural gas meter it utilized was the same as that which had been previously approved by the Department.

ISSUE

I. Gross Retail Tax - Utility Exemption.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-4-5; Indiana Dep't of State Revenue v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974); General Motors Corp. v. Indiana Dep't of State Revenue, 578 N.E.2d 399 (Ind. Tax Ct. 1991); [45 IAC 2.2-4-13](#).

Taxpayer protests the partial denial of its Claim for Refund.

STATEMENT OF FACTS

Taxpayer is a restaurant. Taxpayer had previously been granted an exemption for a portion of its utility service used in direct production. Taxpayer filed a GA-110L (Claim for Refund) for the year 2015 with the Indiana Department of Revenue ("Department"). Taxpayer's refund claim was partially denied by the Department. Regarding the portion that was denied, the Department stated in a letter dated August 22, 2016, that "There is no approved meter on file for Stand Energy."

Taxpayer filed a protest. A telephone hearing was held, and this Memorandum of Decision results. More facts will be provided below as necessary.

I. Gross Retail Tax - Utility Exemption.

DISCUSSION

As a threshold issue the Department notes that a taxpayer claiming an exemption has the burden of showing the terms of the exemption statute are met. Indiana Dep't of State Revenue v. RCA Corp., 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[E]xemption statutes are strictly construed [against the taxpayer] because an exemption releases property from the obligation of bearing its fair share of the cost of government." General Motors Corp. v. Indiana Dep't of State Revenue, 578 N.E.2d 399, 404 (Ind. Tax Ct. 1991), aff'd 599 N.E.2d 588 (Ind. 1992). Additionally, "where such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." RCA Corp., 310 N.E.2d at 101.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). In general, "retail transactions" include the furnishing of electricity, gas, water, steam, or steam heating services by public utilities to consumers. [45 IAC 2.2-4-13](#).

Taxpayer's protest involves a claim for refund that was filed involving a natural gas meter. Thus IC § 6-2.5-4-5 is relevant; that statute states in relevant part:

(c) Notwithstanding subsection (b), a power subsidiary or a person engaged as a public utility is not a retail merchant making a retail transaction in any of the following transactions:

. . .

(3) The power subsidiary or person sells the services or commodities listed in subsection (b) to a person for use in manufacturing, mining, production, refining, oil extraction, mineral extraction, irrigation, agriculture, or horticulture. However, this exclusion for sales of the services and commodities only applies if the services are consumed as an essential and integral part of an integrated process that produces tangible personal property and those sales are separately metered for the excepted uses listed in this subdivision, or if those sales are not separately metered but are predominately used by the purchaser for the excepted uses listed in this subdivision.

In 2004, Taxpayer properly applied for and received approval from the Department for a 39.50 percent exemption for natural gas provided through a particular meter. The name of the natural gas supplier subsequently changed, but the meter number, Taxpayer, and Taxpayer's location remained the same. Taxpayer has provided sufficient documentation to show that it continues to receive natural gas through the same meter previously approved by the Department, and is thus entitled to the full amount of its claimed refund.

FINDING

Taxpayer's protest is sustained.

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